

Remarks

The non-final Office Action dated August 2, 2010 has been carefully reviewed and these remarks are responsive to that Office Action. Claims 1-8, 11, 12 and 14-23 were rejected. Claims 1, 2, 12, 14-17, 18, and 20-23 have been amended. As explained in more detail below, Applicants respectfully submit that all claims are in condition for allowance and respectfully request such notification.

Applicants note for the record co-pending application Serial No. 10/687,135 is on appeal at the time of this Response. The specification and drawings in Serial No. 10/687,135 are the same as the specification and drawings as the present application, however, the claim of priority is different, and the applications have different claims. An appeal brief was filed in Serial No. 10/687,135 on January 25, 2010. In Serial No. 10/687,135, claims 1-6, 12-13, 17, 20, 22-31 and 33-36 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Pub. No. 2001/0034542 to Mann (“Mann”); claims 14-16 and 32 were rejected under 35 U.S.C. § 103(a) as being obvious over Mann, or the modified Mann as applied to claims 1-6, 12-13, 17, 20, 22-31 and 33-36 above, in view of U.S. Patent Pub. No. 2004/0015205 to Whitehurst et al. (“Whitehurst”); and claims 18-19 were rejected under 35 U.S.C. § 103(a) as being obvious over Mann, or the modified Mann as applied to claims 1-6, 12-13, 17, 20, 22-31 and 33-36 above, in view of U.S. Patent No. 6,594,524 to Esteller et al. (“Esteller”). Access to the prosecution history of Serial No. 10/687,135 is available through the U.S. Patent Office’s Public PAIR system. Mann, Whitehurst, and Esteller are already of record in the present application (*see* the Information Disclosure Statement of Applicants, initialed by the Examiner and mailed August 2, 2010 in the present application).

Claim Rejections Under 35 U.S.C. § 101

Claims 15, 16, 22, and 23 were rejected under 35 U.S.C. § 101 because the claimed invention was deemed to be directed to non-statutory subject matter.

Claims 15, 16, 22, and 23 have been amended by this response. *In re Bilski* states that “a claim that purportedly lacks any ‘physical steps’ but is still tied to a machine or achieves an eligible transformation passes muster under § 101.” 545 F.3d 943, 961 (Fed.

Cir. 2008). Applicants respectfully submit that claims 15, 16, 22, and 23, as amended, are drawn to a process that is tied to a particular machine or apparatus, “a medical device system,” to administer a treatment therapy.

Claims 15, 16, 22 and 23 identifies “a medical device system” for performing neurological event screening and providing treatment to a patient with a nervous system disorder. Each of claims 15, 16, 22 and 23, as amended, identifies “a set of monitoring elements” or “at least one processor” for performing steps of each of these claims. Furthermore, Applicants submit that claim 15 (and claim 16 which depends from claim 15), and claim 22 (and claim 23 which depends from claim 22) each provides a transformation by receiving a first input, receiving a second input, and then administering a treatment therapy by the process in accordance with the first and second inputs. Therefore, Applicants respectfully submit that the claims 15, 16, 22, and 23 are directed to statutory subject matter and request withdrawal of the rejection under 35 U.S.C. §101.

Claims 12, 14, and 17 were rejected under 35 U.S.C. 101 because of the broadest reasonable interpretation of “computer readable medium” being deemed to include carrier waves. In accordance with the Examiner’s suggestion, claims 12, 14, and 17 have been amended to claim “a non-transitory computer readable medium.” Therefore, Applicants respectfully submit that the claims 12, 14, and 17 are directed to statutory subject matter and request withdrawal of the rejection under 35 U.S.C. §101.

Claim Rejections Under 35 U.S.C. § 112

Claims 1, 15, 21, and 22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 15, 21, and 22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because it was deemed to be unclear in the step of “receiving a first indication [at the at least one processor] whether the treatment is acceptable” and “receiving a second indication [at the at least one processor]” whether the processor

generates the first and second indications, or whether the processor merely receives the indication input by a user or communicated from a remote location. It is respectfully submitted that the claims 1, 15, 21 and 22 are definite. These claims call for the first and second indications to be received “at the at least one processor” and this feature is clear to one of ordinary skill in the art. It is respectfully submitted that one or ordinary skill in the art would recognize the receiving of the first and second indications at the at least one processor can be indications that are “generated” by the processor, or can be received by the processor from an indication inputted by a user or communicated from a remote location. Therefore, Applicants respectfully submit that the claims 1, 15, 21, and 22 are definite, and request withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-8, 11, 12, and 14-23 were rejected under 35 U.S.C. § 102(b), as being anticipated by Ward et al. U.S. Patent No. 5,713,923.

Independent claims 1, 15, 21, and 22 have been amended to claim “receiving” or “receive a first indication at the at least one processor whether the treatment therapy is within a range of safety.” This feature is disclosed in the specification as originally filed at least at paragraph [117]: “the medical device system may insure that the treatment therapy configuration corresponds to a treatment that is safe to the patient, wherein the treatment therapy configuration is a configuration within a range of safety. Safety to the patient is gauged by an expectation that the treatment does not diminish the health of the patient.” At least this feature is not disclosed in Ward. Ward does not mention a range of safety. Ward does not mention “receiving” or “receive a first indication at the at least one processor whether the treatment therapy is within a range of safety.”

Conclusion

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance. If any matters can be addressed via telephone, the Examiner is invited to contact the undersigned at the number provided below.

Respectfully submitted,

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